



Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Pricing Schedule

November 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on October 17, 2022, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7.³

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing changes on October 3, 2022 as SR-Phlx-2022-40. The instant filing replaced SR-Phlx-2022-40 which was withdrawn on October 17, 2022.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7. Specifically, Phlx proposes to amend: (1) Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY, with respect to its pricing for Price Improvement XL (“PIXL”) executions in SPY; (2) Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A), with respect to its Qualified Contingent Cross (“QCC”) Rebates and Monthly Firm Fee Cap; and (3) Options 7, Section 6, Other Transaction Fees, with respect to PIXL pricing other than options in SPY. Each change will be described below.

Options 7, Section 3

The Exchange proposes to amend Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY, with respect to its PIXL executions in SPY. Today, SPY PIXL Initiating Orders⁴ are assessed a \$0.05 per contract fee, however, members or member organizations that qualify for Options 7, Section 2, Customer⁵ Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap⁶ are eligible for a rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization

⁴ An order entered into a PIXL Auction mechanism shall be comprised of two orders, a PIXL agency order and a contra-side Initiating Order. See Options 3, Section 13.

⁵ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(b)(45)). See Options 7, Section 1(c).

⁶ Today, Firms are subject to a Monthly Firm Fee Cap of \$75,000. See Options 7, Section 4.

executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.⁷ The Exchange separately assesses fees for PIXL Orders contra the Initiating Order⁸ which are not being amended at this time.

At this time, the Exchange proposes to continue to assess SPY PIXL Initiating Orders a \$0.05 per contract fee. Members or member organizations that qualify for Options 7, Section 2, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap will continue to be eligible for a rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts *when contra to an Initiating Order*, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The Exchange's proposal to further qualify that the SPY Complex PIXL Orders greater than 499 contracts must be contra to an Initiating Order, in addition to the member or member organization having executed an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. As is the case today, when the PIXL Order is contra to other than the Initiating Order, the PIXL Order is assessed \$0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer receives a rebate of \$0.40 per contract.

Below is an example of the proposed change which presumes the market participant has met the qualifications for the rebate.

⁷ A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Options 3, Section 13(a)(6)) it represents as agent ("Initiating Order") provided it submits the PIXL order for electronic execution into the PIXL Auction ("Auction") pursuant to Options 3, Section 13.

⁸ When the PIXL Order is contra to the Initiating Order, a Customer PIXL Order is assessed \$0.00 per contract and all other Non-Customer market participants are assessed a \$0.38 per contract fee when contra to an Initiating Order. Further, when the PIXL Order is contra to other than the Initiating Order, the PIXL Order is assessed \$0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer receives a rebate of \$0.40 per contract. Finally, all other Non-Customer contra parties to the PIXL Order that are not the Initiating Order are assessed a Fee for Removing Liquidity of \$0.50 per contract or are entitled to receive the Rebate for Adding Liquidity. When the PIXL Order is contra to a Lead Market Maker or Market Maker quote, which was established at the initiation of a PIXL auction, the Customer PIXL Order is not be eligible for a rebate. See Options 7, Section 3.

Assume:

NBBO and PHLX are both \$1.00 x \$1.50

Initiator sends PIXL Complex Order in SPY to buy 500 spreads (1000 contracts) for \$1.45
(Market Maker not assigned in SPY is contra-side)

Instance 1: When no outside response to interact with the PIXL order - no change from Sep to Oct in pricing

Oct 3 pricing:

Public Customer fee to execute PIXL Complex Order = \$0.00 per contract

Initiating Order fee = \$0.05 fee - \$50.00

PIXL Order rebate = \$0.12 per contract (\$120.00)

The rebate is achieved because the PIXL Order trades against the Initiating Order in its entirety.

Instance 2:

Assume:

Responders to the PIXL Complex Order indicate the following allocation process:

Initiating Order = 40% (400 contracts)

Auction Responders = 60% (600 contracts)

Sept Pricing:

Public Customer fee to execute PIXL Complex Order = \$0.00

(paired) = \$0.05 fee - \$20.00 (\$0.05 x 400 contracts)

Responder fee = \$0.50 per contract - \$300.00

Break-Up rebate = (\$0.40) per contract (\$240.00)

PIXL Order rebate = \$0.12 per contract (\$120.00)

Oct 3 Pricing:

Public Customer Charge to execute PIXL Complex Order = \$0.00

Initiating Order (paired) = \$0.05 fee - \$20.00 (\$0.05 x 400 contracts)

Responder fee = \$0.50 per contract - \$300.00

Break-Up rebate = (\$0.40) per contract (\$240.00)

Additional PIXL Order rebate = (\$0.12) per contract (\$48.00) (\$0.12 x 400 contracts contra PIXL order)

With this change the rebate would be paid only to PIXL Complex Order contracts that were executed against the Initiating Order. The prior pricing rebate was for \$120 (1000 contracts x \$0.12) and the October pricing would be \$48 (400 contracts x \$0.12).

The Exchange desires to continue to incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx. While the proposal no longer offers the \$0.12 per contract rebate that is available today for the PIXL Agency Order when that PIXL Order is contra to other than the Initiating Order, the Exchange believes that market

participants will continue to be incentivized to submit PIXL Agency Orders to Phlx because the Exchange continues to offer a rebate of \$0.40 per contract when the PIXL Order is contra to other than the Initiating Order.

Options 7, Section 4

QCC

The Exchange proposes to amend Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A) with respect to its QCC Rebates.

Today, the Exchange assesses a \$0.20 per contract QCC Transaction Fees⁹ to a Lead Market Maker,¹⁰ Market Maker,¹¹ Firm¹² and Broker-Dealer.¹³ Customers and Professionals¹⁴

⁹ QCC Transaction Fees apply to electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e).

¹⁰ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c). The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 2(a)(3).

¹¹ The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. See Options 7, Section 1(c). The term “Floor Market Maker” is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

¹² The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

¹³ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(c).

¹⁴ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on

are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders¹⁵ and Floor QCC Orders.¹⁶ Rebates are paid on all qualifying executed electronic QCC Orders and Floor QCC Orders based on the following six tier rebate schedule:¹⁷

QCC Rebate Schedule

Tier	Threshold	Rebate per Contract
Tier 1	0 to 99,999 contracts in a month	\$0.00
Tier 2	100,000 to 299,999 contracts in a month	\$0.05
Tier 3	300,000 to 499,999 contracts in a month	\$0.07
Tier 4	500,000 to 699,999 contracts in a month	\$0.08
Tier 5	700,000 to 999,999 contracts in a month	\$0.09
Tier 6	Over 1,000,000 contracts in a month	\$0.11

The Exchange does not pay a QCC Rebate where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Options 7, Section 4).

At this time, the Exchange proposes to reduce the six tier rebate schedule to a two tier schedule as follows:

QCC Rebate Schedule

Tier	Threshold	Rebate per Contract
Tier 1	0 to 999,999 contracts in a month	\$0.09
Tier 2	1,000,000 contracts or more in a month	\$0.17

The Exchange would pay a Tier 1 QCC Rebate of \$0.09 per contract on all qualifying executed electronic QCC Orders and Floor QCC Orders up to 999,999 contracts in a month. The

average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

¹⁵ Electronic QCC Orders are described in Options 3, Section 12.

¹⁶ Floor QCC Orders are described in Options 8, Section 30(e).

¹⁷ Volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable volume tier.

Exchange would pay a Tier 2 QCC Rebate of \$0.17 per contract on all qualifying executed electronic QCC Orders and Floor QCC Orders of \$1,000,000 contracts or more in a month. With this change, the Exchange would pay a \$0.09 per contract QCC Rebate for each contract from the first execution up to 999,999 contracts in a month. Today, Members that execute 0 to 99,999 contracts in a month do not receive a QCC Tier 1 Rebate. Additionally, while today the Exchange pays a Tier 5 QCC Rebate of \$0.09 per contract for 700,000 to 999,999 contracts in a month, with this proposal the proposed \$0.09 per contract Tier 1 QCC Rebate may be up to 999,999 contracts in a month. Also, while today, the Exchange pays a Tier 6 QCC Rebate of \$0.11 per contract for qualifying executed electronic QCC Orders and Floor QCC Orders over \$1,000,000 contracts in a month, the proposed Tier 2 QCC Rebate would be increased to \$0.17 per contract for \$1,000,000 contracts or more in a month.

The Exchange believes that its proposal will incentivize members and member organizations to submit a greater amount of QCC Orders to Phlx in order to obtain a rebate.

Monthly Firm Fee Cap

The Exchange proposes to amend Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A), with respect to its Monthly Firm Fee Cap. Today, Firms are subject to a maximum fee of \$75,000 known as the “Monthly Firm Fee Cap”. Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in Options 7, Section 4, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. The following pricing is excluded from the Monthly Firm Fee Cap: (1) all dividend, merger, and short stock interest strategy executions, as defined in Options 7, Section 4; (2) transactions in broad-based index options symbols listed within Options 7, Section 5.A.; and (3) reversal and conversion, jelly roll and box spread strategy

executions as defined in this Options 7, Section 4. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.¹⁸

At this time, the Exchange proposes to amend the Monthly Firm Fee Cap from \$75,000 to \$150,000. The Monthly Firm Fee Cap has remained at \$75,000 since 2010.¹⁹ The Exchange believes that while this cap is being increased, Firms will continue to be incentivized by the cap.

Options 7, Section 6

The Exchange proposes to amend Options 7, Section 6, Other Transaction Fees, at A. PIXL Pricing with respect to PIXL pricing other than options in SPY. Today, an Initiating Order in PIXL is assessed a \$0.07 per contract fee, with the exception of SPY PIXL Orders which are assessed the pricing within Options 7, Section 4. Today, if the member or member organization qualifies for the Tier 3, 4 or 5 Customer Rebate in Options 7, Section 2 the member or member organization is assessed \$0.05 per contract. If the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month, the member or member organization is not assessed a fee for Complex PIXL Orders. Any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Options 7, Section 2, or executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF Options Classes (excluding SPY Options) in a given month receives one of the PIXL Initiating Order discounts noted herein. Finally, members or member organizations that qualify for Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or

¹⁸ Member organizations are required to notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account.

¹⁹ The Monthly Firm Fee Cap was previously called the Firm Related Equity Option Cap. See Securities Exchange Act Release No. 65888 (December 5, 2011), 76 FR 77046 (December 9, 2011) (SR-Phlx-2011-160).

member organization executes an average of 2,500 contracts per day of Complex PIXL Orders in a month.

Similar to the change proposed for SPY PIXL within Options 7, Section 3, the Exchange proposes to amend Options 7, 6 A. to provide that members or member organizations that qualify for Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap are eligible for a rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts *when contra to an Initiating Order*, provided the member executes an average of 2,500 contracts per day of Complex PIXL Orders in a month.

Below is an example of the proposed change which presumes the market participant has met the qualifications for the rebate.

Assume for Options 7, Section 6A:

NBBO and PHLX are both \$1.00 x \$1.50

Initiator sends PIXL Complex Order in AAPL to buy 500 spreads (1000 contracts) for \$1.45 (Market Maker not assigned in AAPL is contra-side)

PIXL Agency Order qualifies for Customer Rebate Tier 5

Instance 1: When no outside response to interact with the PIXL order - no change from Sep to Oct in pricing

Oct 3 pricing:

Public Customer fee to execute PIXL Complex Order = \$0.00 per contract

Initiating Order fee = \$0.07 fee - \$70.00

PIXL Order rebate = \$0.12 per contract (\$120.00)

The rebate is achieved because the PIXL Complex Order trades against the Initiating Order in its entirety.

Instance 2:

Assume:

Responders to the PIXL Complex Order indicate the following allocation process:

Initiating Order = 40% (400 contracts)

Auction Responders = 60% (600 contracts)

PIXL Agency Order qualifies for Customer Rebate Tier 5

Sept Pricing:

Public Customer fee to execute PIXL Complex Order = \$0.00

(paired) = \$0.07 fee - \$28.00 (\$0.07 x 400 contracts)

Market Maker Responder Penny Symbol fee = \$0.25 per contract (\$0.25 x 600 contracts) - \$150.00

PIXL Order rebate = \$0.12 per contract (\$0.12 x 1000 = \$120.00)

PIXL Agency Order qualifies for \$0.22 per contract rebate (\$132.00) for Category C Customer Rebate which applies to PIXL Complex Orders (\$0.22 x 600 contracts)

Oct 3 Pricing:

Public Customer Charge to execute PIXL Complex Order = \$0.00

Initiating Order (paired) = \$0.07 fee - \$28.00 (\$0.07 x 400 contracts)

Market Maker Responder Penny Symbol fee = \$0.25 per contract (\$0.25 x 600 contracts) - \$150.00

PIXL Order rebate = \$0.12 per contract (\$0.12 x 400 = \$48.00)

PIXL Agency Order qualifies for \$0.22 per contract rebate (\$132.00) for Category C Customer Rebate which applies to PIXL Complex Orders (\$0.22 x 600 contracts)

With this change the rebate would be paid only to PIXL Complex Order contracts that were executed against the Initiating Order. The prior pricing rebate was for \$120 (1000 contracts x \$0.12) and the October pricing would be \$48 (400 contracts x \$0.12).

The Exchange desires to continue to incentivize members and member organizations to transact a greater number of Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx. While the proposal no longer offers the \$0.12 per contract rebate that is available today for the PIXL Agency Order when that PIXL Order is contra to other than the Initiating Order, the Exchange believes that market participants will continue to be incentivized to submit PIXL Agency Orders to Phlx because the Exchange continues to offer Category C and D rebate for Complex Orders when the PIXL Order is contra to other than the Initiating Order.²⁰

Technical Amendments

The Exchange proposes to add the terms “member” and member organization,” where applicable, within the proposed rule text. Pursuant to General 1, Section 1(16), the term “member” means:

²⁰ When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols. A Responder that is a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbol. When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A member is a natural person and must be a person associated with a member organization. Any references in the rules of the Exchange to the rights or obligations of an associated person or person associated with a member organization also includes a member.

Pursuant to General 1, Section 1(17) the term “member organization” means:

a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization.

An entity may be either a member or member organization on Phlx and therefore both terms apply when describing transaction fees and caps applicable to entities that have been approved for membership on Phlx.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4) and (5).

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²³

Likewise, in NetCoalition v. Securities and Exchange Commission²⁴ (“NetCoalition”), the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²⁵ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²⁶

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁷ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 3

The Exchange’s proposal to amend Options 7, Section 3, with respect to its PIXL pricing for SPY options is reasonable because it will continue to incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx.

²³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁴ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁵ See NetCoalition, at 534 - 535.

²⁶ Id. at 537.

²⁷ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

While the proposal no longer offers the \$0.12 per contract rebate that is available today for the PIXL Agency Order when that PIXL Order is contra to other than the Initiating Order, the Exchange believes that market participants will continue to be incentivized to submit PIXL Agency Orders to Phlx because the Exchange continues to offer a rebate of \$0.40 per contract when the PIXL Order is contra to other than the Initiating Order. Requiring SPY Complex PIXL Orders greater than 499 contracts to be contra to an Initiating Order to receive the rebate, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month, will continue to encourage members and member organizations to submit order flow to Phlx to obtain the rebate. As is the case today, when the PIXL Order is contra to other than the Initiating Order, the PIXL Order is assessed \$0.00 per contract, unless the PIXL Order is a Customer, in which case the Customer receives a rebate of \$0.40 per contract.

The Exchange's proposal to amend Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY, with respect to its PIXL pricing for SPY options is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed rebate, provided they met the requisite qualifications. Any member or member organization may enter a qualifying order into the PIXL Auction. Members and member organizations would be uniformly paid the applicable rebate. Additionally, all market participants may interact with order flow which members and member organizations must transact in connection with this rebate.

Options 7, Section 4

QCC

The Exchange's proposal to amend Options 7, Section 4, with respect to its QCC Rebates, to reduce the current six tier rebate schedule to a proposed two tier schedule is reasonable because the proposal will incentivize members and member organizations to submit a greater amount of QCC Orders to Phlx. With this proposal, the Exchange would pay a Tier 1

QCC Rebate of \$0.09 on all qualifying executed electronic QCC Orders and Floor QCC Orders up to 999,999 contracts in a month. The QCC Rebate would be paid for each contract from the first execution up to 999,999 contracts in a month. Today, a Member will not receive a Tier 1 QCC Rebate if they enter 99,999 contracts or fewer in a month, however once a Member enters 100,000 or more contracts, the Member would qualify for the current Tier 2 QCC Rebate for all 100,000 contracts. With this proposal all qualifying executed electronic QCC Orders and Floor QCC Orders up to 999,999 contracts in a month would be entitled to the proposed \$0.09 per contract Tier 1 QCC Rebate. Additionally, while today the Exchange pays a Tier 5 QCC rebate of \$0.09 per contract for qualifying executed electronic QCC Orders and Floor QCC Orders from 700,000 to 999,999 contracts in a month, with this proposal the \$0.09 per contract Tier 1 QCC Rebate would be paid to Members who submit up to 999,999 contracts in a month. Also, the Exchange would pay a Tier 2 QCC Rebate of \$0.17 per contract on all qualifying executed electronic QCC Orders and Floor QCC Orders of \$1,000,000 contracts or more in a month. Today, the Exchange pays a Tier 6 QCC Rebate of \$0.11 per contract for qualifying executed electronic QCC Orders and Floor QCC Orders over \$1,000,000 contracts in a month. The proposed Tier 2 QCC Rebate would be increased to \$0.17 per contract for \$1,000,000 contracts or more in a month.

The Exchange's proposal to amend Options 7, Section 4, with respect to its QCC Rebates, to reduce the current six tier rebate schedule to a proposed two tier schedule is equitable and not unfairly discriminatory because all members and member organizations may qualify for a QCC Rebate provided the member or member organization executed qualifying electronic QCC Orders and Floor QCC Orders.

Monthly Firm Fee Cap

The Exchange's proposal to amend Options 7, Section 4, with respect to the Monthly Firm Fee Cap, to increase the Monthly Firm Fee Cap from \$75,000 to \$150,000 is reasonable because despite the increase, the Exchange believes Firms will continue to be incentivized by the

opportunity to pay no fees beyond the \$150,000 cap. The Monthly Firm Fee Cap has remained at \$75,000 since 2010. Other members and member organizations may interact with the order flow submitted by Firms to Phlx to reach the cap.

The Exchange's proposal to amend Options 7, Section 4, with respect to the Monthly Firm Fee Cap, to increase the Monthly Firm Fee Cap from \$75,000 to \$150,000 is equitable and not unfairly discriminatory as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.²⁸ Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).²⁹ With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8,

²⁸ See Options 7, Section 4.

²⁹ See Options 7, Section 4. The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.³⁰ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms as Broker-Dealers are assessed a lower Options Transaction Charge as compared to Floor Lead Market Makers, Floor Market Makers. Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs³¹ could be subject to the Firm Related Equity Option Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees.

Options 7, Section 6

The Exchange’s proposal to amend Options 7, Section 6, with respect to its PIXL pricing³² is reasonable because it will continue to incentivize members and member organizations to transact a greater number of Complex PIXL Orders while also incentivizing

³⁰ See Options 7, Section 4, which states, “...In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (‘BD-Customer Facilitation’), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX, NDXP, and XND Options Transactions will be excluded from each of the waivers set forth in the above paragraph.”

³¹ The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

³² The PIXL pricing in Options 7, Section excludes SPY options.

members and member organizations to submit Customer order flow on Phlx. While the proposal no longer offers the \$0.12 per contract rebate that is available today for the PIXL Agency Order when that PIXL Order is contra to other than the Initiating Order, the Exchange believes that market participants will continue to be incentivized to submit PIXL Agency Orders to Phlx because the Exchange continues to offer Category C and D rebates for Complex Orders when the PIXL Order is contra to other than the Initiating Order.³³ Requiring Complex PIXL Orders greater than 499 contracts to be contra to an Initiating Order to receive the rebate, provided the member or member organization executes an average of 2,500 contracts per day of Complex PIXL Orders in a month, will continue to encourage members and member organizations to submit order flow to Phlx to obtain the rebate.

The Exchange's proposal to amend Options 7, Section 6, with respect to its PIXL pricing is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed rebate, provided they met the requisite qualifications. Any member or member organization may enter a qualifying order into the PIXL Auction. Members and member organizations would be uniformly paid the applicable rebate. Additionally, all market participants may interact with order flow which members or member organizations must transact in connection with this rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on

³³ When a PIXL Order is contra to a PIXL Auction Responder, a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer PIXL Orders will be assessed \$0.30 per contract in Penny Symbols or \$0.38 per contract in Non-Penny Symbols. A Responder that is a Lead Market Maker or a Market Maker will be assessed \$0.25 per contract in Penny Symbols or \$0.40 per contract in Non-Penny Symbols. Other Non-Customer Responders will be assessed \$0.48 per contract in Penny Symbols or \$0.70 per contract in Non-Penny Symbols when contra to a PIXL Order. A Responder that is a Customer will be assessed \$0.00 per contract in Penny Symbols and Non-Penny Symbol. When a PIXL Order is contra to a resting order or quote a Customer PIXL Order will be assessed \$0.00 per contract, other Non-Customer will be assessed \$0.30 per contract and the resting order or quote will be assessed the appropriate Options Transaction Charge in Options 7, Section 4.

competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition.

Options 7, Section 3

The Exchange's proposal to amend Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY, with respect to its PIXL pricing for SPY options does not impose an undue burden on competition because all members and member organizations are eligible for the proposed rebate, provided they met the requisite qualifications. Any member or member organization may enter a qualifying order into the PIXL Auction. Members and member organizations would be uniformly paid the applicable rebate. Additionally, all market participants may interact with order flow which members and member organizations must transact in connection with this rebate.

Options 7, Section 4

QCC

The Exchange's proposal to amend Options 7, Section 4, with respect to its QCC Rebates, to reduce the current six tier rebate schedule to a proposed two tier schedule does not impose an undue burden on competition because all members and member organizations may qualify for a QCC Rebate provided the member or member organization executed qualifying electronic QCC Orders and Floor QCC Orders.

Monthly Firm Fee Cap

The Exchange's proposal to amend Options 7, Section 4, with respect to the Monthly Firm Fee Cap, to increase the Monthly Firm Fee Cap from \$75,000 to \$150,000 does not impose an undue burden on competition as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.³⁴ Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)).³⁵ With respect to Broker-Dealers, today, the Exchange waives the Floor Options

³⁴ See Options 7, Section 4.

³⁵ See Options 7, Section 4. The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Options 7, Section 4) are excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and,

Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.³⁶ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms as Broker-Dealers are assessed a lower Options Transaction Charge as compared to Floor Lead Market Makers, Floor Market Makers. Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs³⁷ could be subject to the Firm Related Equity Option Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees.

for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (“COLA”). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

³⁶ See Options 7, Section 4, which states, “...In addition, the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) will be waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (‘BD-Customer Facilitation’), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. NDX, NDXP, and XND Options Transactions will be excluded from each of the waivers set forth in the above paragraph.”

³⁷ The term “Joint Back Office” or “JBO” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (“JBO Broker”) subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

Options 7, Section 6

The Exchange's proposal to amend Options 7, Section 6, with respect to its PIXL pricing does not impose an undue burden on competition because all members and member organizations are eligible for the proposed rebate, provided they met the requisite qualifications. Any member or member organization may enter a qualifying order into the PIXL Auction. Members and member organizations would be uniformly paid the applicable rebate. Additionally, all market participants may interact with order flow which members and member organizations must transact in connection with this rebate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

³⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2022-41 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2022-41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2022-41 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2022-24142 Filed: 11/4/2022 8:45 am; Publication Date: 11/7/2022]

³⁹ 17 CFR 200.30-3(a)(12).